

REMARKS

Claims 1-4, 7-10, 12, 14-16, 18-23 and 27-29 are currently pending for examination.

Claims 5, 6, 11, 13, 17, and 24-26 were previously canceled without prejudice. It appears that the Office Action Summary of the Final Office Action erroneously lists these claims as being withdrawn from consideration. Clarification is respectfully requested if this is incorrect.

Rejections under 35 U.S.C. §102(b) in view of Fossel

Claims 1, 3, 7-9, 12, 14, 15, 18, 19, 21, 22, and 27-29 have been rejected under 35 U.S.C. §102(b) as being anticipated by Fossel, U.S. Patent Application Publication No. 2003/0028169 ("Fossel").

The Patent Office has characterized this rejection as being a rejection under §102(b), i.e., an anticipation rejection. To anticipate a claim, the reference applied under §102(b) must teach every element of the claim. See M.P.E.P. §2131. However, it is not seen where Fossel discloses or suggests applying a delivery vehicle comprising L-arginine to a breast. Although Fossel discloses applying L-arginine to a selected area of the skin (e.g., paragraph 0032), nowhere does Fossel specifically teach applying L-arginine to the breast. In fact, the word "breast" appears nowhere in Fossel. Thus, it is not seen how Fossel can be used as an anticipatory reference to the Applicant's claimed invention. Although the breast is a particular species (i.e., location) within the genus of the skin, the converse is not true, i.e., the skin does not consist only of the breast, as the Patent Office appears to suggest ("therefore applying the composition the breast is equal to applying the composition to the skin"). Similarly, Fossel does not inherently teach applying a delivery vehicle comprising L-arginine to a breast, since inherency requires that the undescribed matter must necessarily be present on each and every occasion, and the skin does not consist only of the breasts.

Additionally, the Patent Office states that "since the breast is the selected area of the skin, [the] method of Fossel is fully capable of being applied to the breast." However, the Patent Office has not in fact established that Fossel teaches that the breast is a selected area of the skin, and moreover, a rejection based on an unsupported supposition that a composition is "capable" of being used in a particular application that is not actually described in the reference does not

constitute a proper rejection under §102(b). Accordingly, since Fossel nowhere discloses or suggests applying a delivery vehicle comprising L-arginine to a breast, Fossel cannot be used as an anticipatory reference under 35 U.S.C. §102(b), and it is respectfully requested that this rejection be withdrawn.

Rejections under 35 U.S.C. §103(a) in view of Fossel

Claims 10 and 23 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Fossel.

Claims 10 and 23 ultimately depend from claims 1 and 18, respectively. As mentioned above, independent claims 1 and 18 are not anticipated by Fossel. Accordingly, although it is not conceded that there would have been any rational reason to modify Fossel to reach claims 10 and 23, this rejection cannot stand. Thus, it is respectfully requested that the rejection of claims 10 and 23 be withdrawn.

Rejections under 35 U.S.C. §103(a) in view of Fossel and Nakata

Claim 2 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Fossel in view of Nakata, *et al.*, U.S. Patent No. 5,332,758 ("Nakata").

Claim 2 depends from claim 1. As discussed above, independent claim 1 is not anticipated by Fossel. Thus, while it is not conceded that there would have been any rational reason to make the combination of Fossel and Nakata as was suggested by the Patent Office, the rejection of claim 2 cannot stand. Accordingly, it is respectfully requested that this rejection be withdrawn.

Rejections under 35 U.S.C. §103(a) in view of Fossel and Cooper

Claims 4 and 20 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Fossel in view of Cooper, U.S. Patent No. 6,387,081 ("Cooper").

Claims 4 and 20 respectively depend from claims 1 and 18. For at least the reasons explained above with respect to the rejection under §102(b) in view of Fossel alone, independent claims 1 and 18 are not anticipated by Fossel. Accordingly, while Applicant does not concede

that there would have been any rational reason to combine Fossel and Cooper in the manner suggested in the Office Action, the present rejection cannot stand, regardless. Thus, withdrawal of the rejection of claims 4 and 20 is respectfully requested.

Rejections under 35 U.S.C. §103(a) in view of Fossel and Marty

Claim 16 has been rejected under 35 U.S.C. §103(a) as being unpatentable of Fossel in view of Marty, U.S. Patent No. 4,702,913 ("Marty").

Claim 16 is dependent on claim 1. As previously discussed, independent claim 1 is not anticipated by Fossel. Accordingly, while it is not conceded that there would have been any rational reason to combine Fossel with Marty as was discussed in the Office Action, it is believed that this rejection cannot stand. Thus, Applicant respectfully requests that the rejection of claim 16 be withdrawn.


CONCLUSION

In view of the foregoing, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, any necessary extension of time is hereby requested. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825, under Docket No. S1509.70037US01.

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Respectfully submitted,

By 
Tani Chen, Sc.D.
Registration No.: 52,728
Patrick R.H. Waller, Ph.D.
Registration No.: 41,418
WOLF, GREENFIELD & SACKS, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
617.646.8000